IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 21ST DECEMBER, 2006 / 30TH AGRAHAYANA, 1928

FAO.No. 307 of 2006()

AGAINST THE ORDER DATED 24/11/2006 IN IA.2297/2006 IN
OS.161/2006 of PRL.Sub Court,THALASSERY)
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APPELLANT/RESPONDENT/PLAINTIFF:

CHORAPPAN CHANDRAN, S/O.KOMAPPAN,
AGED 47 YEARS, BUSINESS RESIDING AT AZHIKODE AMSOM
KACHERIPPARA DESOM, KANNUR TALUK, KANNUR DISTRICT,
REPRESENTED BY POA HOLDER T.BALARAMAN,
S/O.T.RAMAN, AGED 49 YEARS, BUSINESS,
RESIDING AT SARASWATHI SADANAM, PAZHASSI AMSOM,
MATTANNUR DESOM, THALASSERY TALUK, KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENT/PETITIONER/DEFENDANT:

C.H.RAJU, S/O.JANAKI AMMA, AGED 70 YEARS,
PENSIONER, RESIDING AT "RAVIMANDIRAM",
PAZHASSI AMSOM, MATTANNUR DESOM, P.O.MATTANNUR,
THALASSERY TLAUK, KANNUR DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE (CAVEATOR)

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M. RAMACHANDRAN & A.K.BASHEER, JJ.

F.A.O.NO. 307 OF 2006

Dated this the 21st day of December, 2006

J U D G M E N T

Basheer, J.

Plaintiff in a suit for specific performance of an agreement for sale impugns the interim order passed by the trial court.

2. The court below in its order has directed the appellant/plaintiff to deposit a sum of Rs.47,82,000/- in court within a period of one month from the date of the order viz., November 24, 2006. The above order has been passed in an interlocutory application filed by the respondent/defendant under Order XXXIX Rule 10 read with Section 94(c) and 151 of the Code of Civil Procedure.

3. We have heard learned counsel for the appellant and also learned counsel for the respondent who has appeared on caveat.

4. Having heard learned counsel for the parties and having regard to the submissions made by them at the Bar in the course of the arguments, it may not be necessary for

us to deal with the rival contentions at this stage. It is submitted on behalf of the appellant that he had always been ready and willing to perform his part of the contract. Even now he is ready to do so. What he requires is only some breathing time to raise some more additional funds to be paid to the respondent/defendant which he expects to obtain from the Bank within one month. The appellant therefore submits that he may be granted at least one month's time to raise the funds so that the entire transaction could be completed. He further submits that the Advocate Commissioner who has been deputed by the court below has measured the property. What remains is only finalisation of the measurement and submission of the report.

5. Learned counsel for the respondent/defendant has no objection if a time frame is fixed by this Court keeping in view the request by the appellant. His only anxiety is that the appellant may not be allowed to drag his feet and thus procrastinate the matter.

6. Learned counsel for the appellant further submits that the court below may be directed to fix the exact extent of land available for transaction on receipt of the report of the Advocate commissioner. We do not find any reason to assume that the court below will not look into that aspect as well.

7. In the above facts and circumstances, the appeal is disposed of with the following directions:-

1. The court below shall ensure that the Advocate Commissioner files his report within three weeks from today. Appropriate directions in this regard shall be issued by the court below to the Advocate Commissioner.

2. On receipt of the report, the court below shall afford sufficient opportunity to the parties to raise objections, if any, to the same. The exact extent of land available for transaction shall be ascertained and fixed by the court below

in the light of the report within two weeks from the date of receipt thereof.

3. The appellant/plaintiff shall deposit the balance consideration before the court below within six weeks from the date when the court fixes the exact extent of land available for sale.

4. The respondent/defendant shall execute the document on deposit/receipt of the sum payable in terms of the direction to be issued by the court below.

The appeal is disposed of with the the above modifications to the impugned order.

M. Ramachandran, Judge

A.K.Basheer, Judge

Mbs/

M. RAMACHANDRAN &
A.K.BASHEER, JJ

W.P.(FC).NO. OF 200

J U D G M E N T

DATED: -11-2006